TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #05-330

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from March 31, 2010, through June 11, 2010, on IDEM's draft rule language. IDEM received comments from the following parties:

Eli Lilly and Company (ELC)
Bingham McHale (CASE Coalition) (BM)
Indiana Energy Association/Indiana Utility Group (IUG)
Indianapolis Power and Light Company (IPL)
Barnes and Thornburg on behalf of Indianapolis Power and Light Company (BT)
Aloca Inc./Alcoa Power Generating Inc. (Alcoa)
Indiana Chamber of Commerce (ICC)
Indiana Manufacturers Association, Inc. (IMA)

Following is a summary of the comments received and IDEM's responses thereto.

Comment: The commenter supports the comments filed by the Indiana Manufacturers Association and the Indiana Energy Association. (ICC)

Response: IDEM acknowledges the support.

Comment: The long delay in the rulemaking schedule between the First Notice of Comment Period and the Second Notice of Comment Period sets a bad precedent and suggests that IDEM and stakeholders, including potentially affected sources, may be better served by starting a new rulemaking process given that personnel (both at IDEM and within the stakeholder community) and driving regulatory issues have changed during that time. (ICC)

Comment: While IDEM is under no statutory timeframe in which a proposed rule may be subject to the promulgation process, the commenter does not understand the wisdom in not beginning the process anew given the 51 month delay. (IUG)

Response: IDEM believes that starting this rulemaking over would only delay the rulemaking longer. The Second Notice of Comment Period is still early in the rulemaking schedule to allow enough time for public input. The Second Notice of Comment Period, which was published earlier this year, is the first time the public has an opportunity to review draft rule language.

Comment: If IDEM elects to move forward with this rulemaking, IDEM should convene a workgroup comprised of interested stakeholders to lay out the proposed rule and seek input on the many complicated sections of the proposal. (ICC)

Comment: It would be helpful to review the minutes derived from a stakeholder meeting held on March 15, 2007, to ensure that the discussions from that meeting are captured in the context of this rulemaking. There is a lack of information regarding why the changes in this rulemaking are necessary. (IUG)

Response: IDEM held an interested parties meeting on September 8, 2010, to discuss this rulemaking. Minutes from the March 15, 2007 meeting are not available. These changes are necessary for state implementation plan (SIP) approvability and to clarify/update the compliance monitoring rules.

Comment: The commenter appreciates that IDEM extended the Second Notice of Comment Period so that others can comment in a more detailed manner. (IMA)

Response: IDEM appreciates the support for an extension of comment period.

Comment: Consistency with federal compliance monitoring rules is of the utmost importance. Instances where an IDEM provision could overlap with a federal provision requiring a more stringent result should be eliminated unless a specific situation exists to warrant the deviation. (IMA)

Comment: Being regulated by conflicting federal and state standards is not only confusing but is costs Indiana facilities additional money to ensure and report compliance with both standards. Compelling reasons must exist for varying from the federal standards. (BM)

Comment: IDEM should take the opportunity afforded by opening up the compliance monitoring rules to ensure that the Indiana rules are consistent with federal compliance monitoring rules, in particular the monitoring rules found in federal NSPS and NESHAP rules. (ELC)

Response: IDEM discussed this issue with interested parties at the September 8, 2010 meeting. IDEM understands the frustration with overlapping requirements, but in some instances this is necessary. IDEM has reviewed overlapping requirements and has addressed as appropriate in each of the specific comments made on this issue.

Comment: Two of the three primary purposes IDEM identified with this rulemaking are (1) changes that U.S. EPA requested and (2) to allow the use of PM CEMS in lieu of COMs. Changes should be limited to only those two and that the other changes should be addressed in a different rulemaking. In addition, it is not clear whether other changes were discussed in the First Notice of Comment Period. (IPL) (BT) (IUG)

Response: The changes that IDEM is proposing update and clarify compliance monitoring requirements in 326 IAC 3 and 326 IAC 7-2-1, which are all within the scope of this rulemaking.

Comment: In many instances IDEM is proposing to add the term “sources and emissions units.” In some instances, this is improper. For example, in many instances, IDEM changes rules that apply to “facilities” and substitutes “sources and emissions units.” Not all emissions units at a source may be subject to 326 IAC 3. (IPL) (BT) (IUG)

Response: IDEM agrees that not all emissions units at a source may be subject to 326 IAC 3. The only instances IDEM inserted "sources and emissions unit" is in 326 IAC 3-5-1 and 326 IAC 3-5-3. In most instances IDEM inserted "sources or emission units" in the draft rule language. IDEM has deleted 326 IAC 3-5-1(a) of the current rule language in the rule for preliminary adoption because the introductory language is not necessary as discussed in a subsequent comment. IDEM has revised the language at the new 326 IAC 3-5-1(a) and (b) in the rule for preliminary adoption to say "sources or emissions units". IDEM feels it is appropriate to include both term, "sources" and "emissions units", in this section because some of the thresholds for applicability are based on emissions units and others are based on plant production, for example, sulfuric acid plants. IDEM made changes throughout the draft rule for preliminary adoption to make it clear that requirements for affected emissions units do not necessarily apply to other emission units at the source. Some "source or emissions units" were left as is because it did not appear to change the meaning.

Comment: Why are definitions from the federal Compliance Assurance Monitoring (CAM) rules set out at 40 CFR 64 that are incorporated by reference at 326 IAC 3-8-1, being added? (IUG)

Response: Not all sources subject to Article 3 are CAM sources. These terms are used in Article 3 and were not previously defined. IDEM is proposing to delete the definition of "potential to emit" in the draft rule language for preliminary adoption because this CAM definition is not needed. While this term is referenced in the applicability of NO_x sources in Clark and Floyd counties applicability is ultimately determined by applicability language in Article 10.

Comment: IDEM should rely on existing definitions already provided in 326 IAC wherever possible and not create separate definitions in Article 3. (IUG)

Response: IDEM agrees and has deleted the definition of "major source", "owner or operator", "control device", and "inherent process equipment" in the draft rule for preliminary adoption. IDEM did not delete the definition for "emissions unit", but instead referenced the definition already included in Article 1 because it is defined in both Article 1 and Article 2-7. The definition of "permit" was revised to refer to 326 IAC 2 instead of referring to individual rules.

Comment: Delete the phrase "as specified by the U.S. EPA pursuant to regulations under Section 412 of the Clean Air Act" in the definition of "Continuous emissions monitoring system" in 326 IAC 3-4-1. Section 412 of the Clean Air Act addresses the Acid Rain program and having this language is confusing, because it appears to limit the definition of CEMS only to those units that are regulated under the Acid Rain provisions. That does not appear to be the intent of the agency when drafting this definition. (ELC)

Response: IDEM agrees and has deleted the phrase in the draft rule for preliminary adoption.

Comment: The proposed definition for "boiler operating day" in the draft rule language at 326 IAC 3-4-1(1) should be "the twenty-four (24) hour period", not "a twenty-four (24) hour period", and "during" should be added to "combusted during the entire twenty-four (24) hour period." (BM)

Comment: The proposed definition for "boiler operating day" in the draft rule language at 326 IAC 3-4-1(1) conflicts with the calculation provided for in the state implementation plan (SIP) for SO_2 and NO_x. It appears the only reference to "boiler operating day" in Article 3 is the proposed language at 326 IAC 3-5-1(c)(iv)(AA). (IUG)

Response: The term "boiler operating day" is not needed in the proposed language for PM CEMS at 326 IAC 3-4-1(1). The definition and use in 326 IAC 3-4-1(1) has been deleted in the draft rule for preliminary adoption.

Comment: While the definition of "control device" in 40 CFR Part 64 includes acid plants and sulfur recovery plants, inclusion of the same in definition of "control device" in 326 IAC 3-4-1 does not appear to be necessary or relevant. (BM)

Response: The definition of "control device" was deleted in the draft rule for preliminary adoption to address the concern expressed in a previous comment to rely on existing definitions already provided in 326 IAC wherever possible.

Comment: The definition of "emission limitation or standard" proposed in 326 IAC 3-4-1(8)(A) differs from the definition found in 40 CFR Part 64. It expands the definition to applicable requirements other than those listed in subsection (A)(i) through (A)(iii) of the draft rule by including the phrase "including the following." Additionally, the proposed definition omits examples of general operational requirements that are exempted from the definition. Moreover, the draft rule at 326 IAC 3-4-1(8) confusingly states "as defined under the CAA" and should be rephrased as "contained in this title." Lastly, 326 IAC 3-4-1(8)(B) omits that an emission limitation or standard may be expressed as a work practice, process, or control device parameter. (BM)

Response: IDEM has deleted the phrase "including the following" from the proposed language for preliminary adoption. IDEM did not include the example of operational requirements in 326 IAC 3-4-1(6)(C) (updated citation in the proposed language for preliminary adoption) because IDEM does not typically list examples in rule language. While IDEM agrees the use of the word "defined" could be confusing, since this is in reference to limitations and standards established or regulated in the CAA, IDEM has kept the use of the word "defined" to be consistent with the CAM definition. IDEM believes that the suggestion to say "in this title" is inappropriate given that there may be provisions in the CAA that are not contained in Title 326. IDEM has reworked 326 IAC 3-4-1(6)(B) to be consistent with the language in 40 CFR 64.

Comment: Clarify the proposed definition of "exceedance" in 326 IAC 3-4-1(11)(B) by inserting "contained in this title" after "applicable emission limitation or standard." (BM)

Response: The definition does not need to be amended because the definition of "applicable emission limitation or standard" already includes similar language.

Comment: The proposed definition of "owner or operator" is consistent with the definition provided in 326 IAC 1-2-51 and may be important for purposes of liability and responsible party references in Indiana and federal law and regulations. However, the term and definition, as utilized throughout this article are not consistent with common everyday practices. Contractors are utilized and responsible for many functions throughout this article. As currently presented, contractors could not perform those functions. Further, the current proposal may be contrary to accreditation requirements for certain contractor testing as provided in 40 CFR Part 75. Amend definition to include "lawful designee." (IUG)

Response: IDEM is deleting the definition of "owner or operator" in the draft rule for preliminary adoption as it is defined in Article 1 and it is not necessary to have a different meaning in 326 IAC 3. IDEM believes responsibility for compliance is on the owner or operator of the source, not person hired to do the monitoring. U.S. EPA has added "contractor" provisions to federal rules, but only on case by case basis.

Comment: The definition for "unit operating hour" should include the word "any" instead of "all", to read "…while **any** associated emission units are combusting fuel." (IUG)

Response: IDEM has amended the definition in draft rule for preliminary adoption as suggested.

Comment: Consistent with the definition section and other references throughout the proposed rule, change the word "limit" to "limitation" in 326 IAC 3-4-1(15)(A)(iii) and the change the last phrase of 326 IAC 3-4-1(15)(C)(viii) to "with an emission limitation or standard". (BM)

Response: IDEM has amended the definition for "monitoring" in draft rule for preliminary adoption as suggested.

Comment: 326 IAC 3-5-1 generally sets forth requirements to properly calibrate, test, and report data from COMS and CEMS. It is a collection of existing substantive requirements, but does not appear to establish new substantive requirements, as stated in 326 IAC 3-5-1(a)(1). The rule does not establish a "process for developing suitable continuous monitoring requirements," as stated in 326 IAC 3-5-1(a)(2). The introductory text in unnecessary and 326 IAC 5-5-1(a) should be deleted. (IPL) (BT)

Response: IDEM agrees and has deleted subsection (a) in the current 326 IAC 3-5-1 and relettered the remaining subsections in the draft rule for preliminary adoption.

Comment: 326 IAC 3-5-1(b)(2) through (8) each should include "to the extent to determine compliance with an emission limitation or standard contained in this title." (BM)

Response: IDEM added "to determine compliance with an emission limitation or standard" in the lead-in paragraph for this subsection in the draft for preliminary adoption to address this comment. 40 CFR 51, Appendix P, allows states to exempt emissions units not

subject to an applicable emission standard of an approved SIP.

Comment: Replace "326 IAC 2-1" with "326 IAC 2-1.1" in 326 IAC 3-5-1(d). (BM)
Response: IDEM agrees and has made the replacement in draft rule for preliminary adoption as suggested.

Comment: Delete the word "of" in the second sentence of 326 IAC 3-5-2(5), just prior to "40 CFR 60." (BM)
Response: IDEM has deleted "of" in draft rule for preliminary adoption.

Comment: The commenter has concerns with the language provided at 326 IAC 3-5-4, standard operating procedures. The requirement that the SOP manual include daily operation ((c)(7)(A)) and preventive maintenance and corrective maintenance ((c)(9)) procedures is too broad considering the numerous scenarios that could be included. Instead these procedures should be maintained on site or stored at a central location and made available to the department upon request by the department. This would also eliminate burdensome updates to the SOP manual every time a tweak to a procedure or frequency of an action is made. Also, the requirement ((c)(10) regarding the listing of spare parts should be deleted. U.S. EPA removed this requirement from federal 40 CFR Part 75 rules (May 26, 1999, 64 FR 28564) (IUG)
Response: IDEM does not consider this too burdensome since updates are submitted to IDEM within two years of the revisions. Until that time the updated procedures can be maintained onsite. IDEM does look at the spare parts list and wants to know if source is taking too long getting a part or if it is a part the source would not be expected to be kept available. The state rule only requires sources to keep a listing of the manufacturer's recommended spare parts inventory. The changes at the federal level for Part 75 sources removed the requirement to maintain an inventory of spare parts.

Comment: How are/will conflicts between quality assurance requirements under a NSPS or NESHAP and 326 IAC 3-5-5 be resolved? (BM)
Comment: Amend 326 IAC 3-5-5(a) as follows:

> Sec. 5. (a) Except where **specific provisions in 40 CFR 60*, 40 CFR 61*, 40 CFR 63* or** 40 CFR 75* **are** ~~is~~ applicable for affected ~~facilities~~ **sources or emissions units** ~~under the acid rain program~~, quality assurance requirements specified in this section and 40 CFR 60*, Appendix F, apply to continuous emission monitors that monitor the following:

The proposed amendment will ensure that where a federal regulatory requirement varies from 40 CFR 60, Appendix F, that requirement will still remain as the applicable QA/QC provisions for the emission unit. (ELC)
Response: In general, emissions units would be subject to requirements in both rules. IDEM is proposing in the draft rule for preliminary adoption to delete emissions units subject to 40 CFR 61 and 40 CFR 63 from the applicability provisions in 326 IAC 3-5-1 and therefore NESHAP sources would not be subject to 326 IAC 3-5-5 eliminating this issue for NESHAP

sources, unless the emissions unit was brought into 326 IAC 3-5 because of another applicability provision. For NSPS sources, there is more of a consistency between 40 CFR Part 60 and it is less of an issue.

Comment: To address different terminology used in 326 IAC 3-5-5(a) and 40 CFR Part 75 the text at 326 IAC 3-5-5(a) should be revised as follows:

> "Except for "affected units" under Part 75 that are also "emissions units" subject to this rule, quality assurance requirements specified in this section and 40 CFR 60, Appendix F, apply to continuous emission monitors that monitor the following:"

326 IAC 3-5-5(b) should read as follows:

> "Emission units that are <u>also</u> subject to 40 CFR Part 75 shall follow the quality assurance procedures of 40 CFR 75 and report the results in accordance with subsection (f)."

Also, all units subject to Part 75 QA requirements should use Part 75 QA procedures. There is no basis to only extend Part 75 requirements only to "peaking units."(IPL) (BT)

Response: IDEM has revised 326 IAC 3-5-5(a) and 326 IAC 3-5-5(b) as suggested. IDEM added "peaking units" to address the fact that many of the turbines/peaking units went ahead and installed CEMS because IDEM had asked for NO_x and CO CEMS for PSD purposes. Since "peakers" do not operate all the time this was causing a problem because our rules do not allow for extending the requirement to conduct annual RATAs. Therefore "peakers" were constantly running into conflict with the requirement to do a RATA during times when they were not operating. This was meant specifically for "peakers" and was not intended to address units that are in constant operation.

Comment: 326 IAC 3-5-5(f) requires certain audits to be conducted with RATAs submitted to the department within 30 days of the end of each quarter. Common practice has been to submit the report within 45 days after the completion of the test, which is also IDEM's preference. Clarity on the timing for filing these reports needs to be provided. (IUG)

Response: Yes, 45 days has been common practice and IDEM prefers this timeframe for RATAs as this is the timeframe for submitting performance test data.

Comment: How are/will conflicts between the averaging periods required in 326 IAC 3-5-7(b)(3) and those contained in individual NSPS or NESHAP be resolved? (BM)

Comment: The reporting requirements found in 326 IAC 3-5-7 provide a clear example of where the Indiana rules create confusion and potential conflict with federal regulatory requirements. 326 IAC 3-5-7(b)(3) specifies that gaseous excess emissions data reports shall be reported using three hour block periods ending at 03:00 and every three hour block thereafter. This subsection ends with the phrase regarding data reports for sources or emissions units subject to hourly, daily or other averaging time periods, a phrase which doesn't very clearly state what information is required. This language is very confusing, and could be read to require a source to report emissions data in both 3-hour blocks and another applicable reporting period, such as a

24-hour block, because of the nature of the applicable emission limit. If a source operated a total hydrocarbon (THC) CEMS because of MACT standard that was a 24-hour limit, there is no reason the source should have to report the data in 3-hour blocks. Because the last sentence in the subsection is limited only to 1-hour, daily/24-hour, and 30-day averaging periods, it also provides no guidance in the circumstances where a standard may expressed in a different averaging period. In addition, this language is inconsistent with similar language in what is proposed to be 326 IAC 3-5-7(c)(3). The confusion and potential conflict in this provision could be resolved by deleting 326 IAC 3-5-7(b)(3) in its entirety. The language in what is proposed to be 326 IAC 3-5-7(c) adequately describes the requirements. (ELC)

Comments: The current language at 326 IAC 3-5-7(b)(3) appears to require the reporting of 3 hour block averages regardless of the averaging time of the applicable emissions limitation. The language should be clarified to require that sources report the gaseous emissions data which is consistent with the applicable standard as follows:

> "(3) Gaseous excess emissions data reports shall include the emissions data for each averaging period in the reporting period. The averaging period shall be consistent with the applicable emissions limitation. Gaseous excess emissions data shall be reported with the quarterly report required in this section." (IUG)

Response: In general, emissions units would be subject to requirements in both rules. IDEM has amended 326 IAC 3-5-7(b)(3) in the draft rule for preliminary adoption to say that the three hour block average does not apply if the owner or operator must demonstrate compliance with a different averaging period as specified by an applicable rule or permit condition. IDEM is also proposing that emissions units that were only subject to 326 IAC 3-5 because of NESHAP applicability will no longer be subject to 326 IAC 3-5 thus removing the requirement for quarterly reports for excess emissions under 326 IAC 3-5-7 allowing for NESHAP emission units to follow the schedule in the applicable NESHAP and Title V. IDEM plans to submit this rulemaking to U.S. EPA for SIP approval and will continue to discuss this rulemaking with U.S. EPA as it is reviewed for federal approval.

Comment: Amend the reporting requirements at 326 IAC 3-5-7(c)(4) to indicate that daily zero and span calibration checks should be kept on site as indicated in the record keeping requirements of 326 IAC 3-5-6. (IUG)

Response: IDEM deleted the phrase "which shall be reported separately" at 326 IAC 3-5-7(c)(4) in the proposed rule for preliminary adoption to address the conflicting language.

Comment: The record keeping requirements of 326 IAC 3-5-7(d)(2) are duplicative of 326 IAC 3-5-6(a)(6). Delete 326 IAC 3-5-7(d)(2) and merge the remainder of this rule into one paragraph under 326 IAC 3-5-7(d). (BM)

Response: IDEM agrees and has deleted 326 IAC 3-5-7(d)(2) in the draft rule for preliminary adoption as suggested.

Comment: The plain language of 326 IAC 3-5-8(c) requires that the CEMS and COMS be in continuous operation regardless of operational status of the equipment being monitored.

IDEM should amend 326 IAC 3-5-8(c) to the following:

> "(c) CEMS and COMS shall be in continuous operation during periods of emission unit operation except for CEM/COM malfunctions, repairs, calibration checks, and zero and span adjustments and other required QA/QC activities." (BM)

Comment: Add "…during operation of the emissions unit(s) being monitored unless provided otherwise in the source or emission unit's operating permit" to the end of 326 IAC 3-5-8(c) to address times when the unit is not monitoring or during planned outages. (IUG)

Comment: The commenter appreciates IDEM's efforts to clarify that monitoring system malfunctions, repairs, and other QA/QC activities should be recognized as valid events that do not require operation of the CEMS or COMS. The following revisions are offered to the language to clarify its purpose and intent, and to eliminate redundancy or unintentional conflict:

> "326 IAC 3-5-8 **Operation and** Maintenance of continuous emission monitoring and continuous opacity monitoring systems
>
> Sec. 8. (a) This section applies to the **operation and** maintenance of CEMS and COMS.
>
> (b) The owner or operator of a CEMS or COMS **required by federal or state regulations or permit** shall:
> (1) install;
> (2) calibrate;
> (3) maintain;
> (4) operate; and
> (5) certify;
>
> ~~all necessary~~ **such** CEMS or COMS~~,~~ and related equipment in accordance with applicable federal regulations, this rule, and any applicable permits.
>
> (c) Except for **periods when:**
> **(1) the affected source or emissions unit is not operating;**
> **(2) the affected source or emissions unit is operating under a scenario that does not require CEMS or COMS;**
> **(3) the affected source or emissions unit is operating in a scenario where there are no emissions of the pollutant for which the CEMS or COMS measures;**
> **(4) the CEMS or COMS is experiencing a malfunction;**
> **(5) the owner/operator is repairing the CEMS or COMS; or**
> **(6) the owner/operator is conducting CEMS or COMS quality assurance and quality control activities, including, but not limited to:**
> **(A) calibration checks;**
> **(B) zero and span adjustments;**
> **(C) calibration gas audits; or**
> **(D) other required quality assurance/quality control activities,**

~~system breakdowns, repairs, calibration checks, and zero and span adjustments,~~ all CEMS and COMS shall be in continuous operation." (ELC)

Response: IDEM has amended the draft language for preliminary adoption to reflect revisions as suggested by ELC, except for inclusion of subdivisions (2) and (5). IDEM did not include the suggested subdivisions (2) because there are too many possible scenarios with all the regulated sources to consider an across the board exemption, and (5) is covered under the malfunction provisions. This revision includes the revision suggested by the other commenter to limit CEMS/COMS operation to periods of emissions unit operation.

Comment: 326 IAC 3-5-8(e)(2) states that the source has to submit reports in accordance with Section 7(d). Section 7(d) only covers reports where there are no excess emissions or monitoring downtime during the reporting period. Amend citation to "section 7." (IUG)

Comment: Since section 7(d) only talks about reports where there are no excess emissions or monitoring downtime 326 IAC 3-5-8(e)(2) should be changed to cite "section 7." (IPL) (BT)

Response: IDEM has removed the reference to subsection (d) as suggested.

Comment: 326 IAC 3-6-2 should require IDEM to issue a written approval of a stack test protocol at some point prior to conducting the stack test. (ELC)

Comment: There are no time limits on IDEM to indicate its approval or disapproval of the test protocol form in 326 IAC 3-6-2(a). Similarly, 326 IAC 3-6-2(h) provides a new requirement that rescheduled test dates must be approved by the department if notification is provided to IDEM less than 14 days prior to the rescheduled test date. This may be an appropriate area to address with a non-rule policy document (NPD). The commenter requests that this topic be taken up in a workgroup setting with all interested parties given an opportunity to agree upon a suitable protocol. (IUG)

Response: At this time IDEM does not have the resources to formally send approval letters to companies. Additionally, protocol approval is often dependent upon a source providing additional information to IDEM and this often means the reviewer and the source are continuing to discuss the acceptability of the protocol within days of the scheduled test. IDEM continues to approve protocols and works with sources as necessary to ensure any issues with the protocol are communicated within an acceptable timeframe. Sources are always free to contact IDEM to discuss the status of any given protocol. IDEM is not proposing to amend the rule as suggested.

Comment: Use of the term "minor change" in 326 IAC 3-6-2(d) is vague. (BM)

Response: A minor change is simply a change that is generally acceptable and does not involve a change which would require a resubmittal and subsequent review of an already approved protocol. An example of a minor change would be using Method 17 instead of Method 5, or using an instrumental method to measure oxygen and carbon dioxide instead of taking a sample for Orsat Analysis.

Comment: Proposed changes at 326 IAC 3-6-3(b)(2) which requires emissions test runs

to be conducted within 24 hours unless otherwise impracticable or approved by the commissioner. This is not a realistic requirement for relative accuracy test audits (RATAs) and other non-RATA tests may extend beyond 24 hours also. IDEM should delete this proposed revision to the rule. (IUG)

Comment: 326 IAC 3-6-3(b)(2) which requires all test runs for a given pollutant be conducted within 24 hours is more stringent than federal requirements. What is the need for this requirement? Would approvals for more time be considered a variance from the rule requiring public notice? Could IDEM approvals be done in a timely manner? IDEM should adopt an approach similar to U.S. EPA where stack testing approaches are issued as guidance and not a rule to adopt approaches on a case by case basis. (BM)

Response: The purpose of this is to ensure sources conclude testing within a reasonable timeframe. IDEM understands that circumstances may necessitate a longer timeframe therefore the provision does allow for approval of a longer test time. The reason this has been proposed is that IDEM does not want sources conducting a test run, stopping a test and then cancelling the remaining runs after receiving information that the first run appears non-compliant. Sources are free to conduct preliminary test runs at their discretion; however, when the formally scheduled test is to take place, all test runs should be conducted within reasonable timeframes. In order to accommodate more situations up front in the rule, IDEM is proposing in the draft rule for preliminary adoption to change the timeframe from 24 hours to 48 hours.

Comment: A source should be required to include in the report a summary of the stack test results in comparison to the applicable emission limit that was tested against. This would ensure that the source is aware of the test results as it relates to the emission limit instead of putting the source in the position of asserting, under certification of truth and accuracy, compliance or non-compliance with an emission limit. Many sources view the determination of compliance or non-compliance as a function of IDEM or a court, and fear the risk of further liability if the agency were to determine that a source certified compliance but there was an error in the report that revealed non-compliance. Language proposed in 326 IAC 3-6-4(a)(2)(A) should be deleted. In its place, a new item (F) should be added to 326 IAC 3-6-4(a)(3) that reads as follows:

"(F) A stack test result summary table that compares the measured emissions in units consistent with the applicable emissions limitations to the emissions limitations." (ELC)

Comment: Amend 326 IAC 3-6-4(a)(2) to require that the source provide a comparison of the emission unit's limit(s) and the result(s) of the stack test(s). As it is currently drafted it appears to ask for the compliance status of every requirement associated with the unit or units tested which would be duplicative of other reporting requirements rather than the results of the stack test. (BM)

Comment: Delete the proposed changes at 326 IAC 3-6-4(a)(2)(A) that requires reporting of a "complete listing of all applicable compliance limits." This information is available in the applicable operating permit for a particular emissions unit or source. (IUG)

Response: IDEM believes it is helpful to both sources, and IDEM to include the applicable limitations and the compliance status in the test report. In the past there have been

cases where the source has failed to mention they are non-compliant and has simply sat back and waited for IDEM to act. In these cases the sources have exceeded their 120 day requirement for retesting, and due to the prioritization at IDEM of non-compliant test reports, these reports were not reviewed for many months as IDEM staff believed them to be compliant. IDEM believes that this not an overly burdensome provision as IDEM assumes sources to already be well aware of the applicable compliance limits in their permits. Restating this information in the test report should require only minimal effort on the source's part. IDEM is proposing to amend the draft rule for preliminary adoption to require "a stack test result summary table that compares the measured emissions in units consistent with the applicable emissions limitations to the emissions limitations." This would ensure that the source is aware of the test results as it relates to the emission limit and clarify that it is a comparison to applicable emissions limitations and not every requirement associated with the unit.

Comment: 326 IAC 3-6-4(b) requires sources to submit test reports no later than 45 days after completion of the test with an option to request extended time. There is no means provided for sources to know if an extension was granted. This is an issue that could be settled through workgroup discussion. (IUG)

Response: IDEM responds to all extension requests upon receipt. This has been done formally through certified mail, however it is often done via e-mail to expedite the process. Again, sources are always welcome to inquire about the status of any extension request at any given time.

Comment: IDEM should revise 326 IAC 3-6-5(a)(2) to allow sources to use OTM-28 to measure particulate matter (PM) emissions until U.S. EPA publishes a new or revised condensable PM test method. U.S. EPA is spending a considerable amount of time and money in the development of a test method that will accurately measure condensable PM. IDEM has already acknowledged that U.S. EPA plans to either amend or replace Method 202 for measurement of $PM_{2.5}$ by including language in the commenter's air permit requiring testing once U.S. EPA publishes a revised or new test method. (Alcoa)

Comment: Add a provision at 326 IAC 3-6-5(a)(2) to allow the use of "other procedures approved by the department" in measuring PM10. This would allow a source to request the use of the conditional test method for PM10 that is designed to eliminate artifacts associated with Method 202. (IUG)

Response: IDEM has revised 326 IAC 3-6-5(a)(2) to allow "other methods as approved by the department and U.S. EPA."

Comment: The proposed changes to 326 IAC 3-6-5(a)(3) would require visible emissions (VE) evaluation testing during stack tests for PM and PM10 as well as for "other mass emission rate testing, as required by the department." Waivers would have to be obtained from the department rather than the on-site department staff as currently required. Allow on-site department staff to issue adverse weather condition waivers. Why are VE evaluations required? The VE notations may be a surrogate for particulate, but stack test results for particulate are

more accurate than the VE notations or opacity. What is "other mass emission rate testing"? It is not clear that VE or opacity would be an appropriate surrogate for "other mass emission rate testing." What would be the basis the department requiring VE testing? Stacks equipped with wet scrubbers should be exempt from the requirement to conduct VE evaluation during testing. VE evaluations should be eliminated during stack tests, or at least the requirement for VE notations during mass emission rate testing should be deleted. (IPL) (BT) (IUG)

Comment: The proposed amendment at 326 IAC 3-6-5(a)(3) for testing of PM or less than PM10 emissions requiring visible emissions (VE) evaluations in conjunction with PM, PM10, or other mass emission rate testing of air pollutants could be interpreted to require Method 9 opacity readings when gaseous pollutants or PM pollutants are measured. Also, the proposed amendment does not provide relief for emission units that installed a PM continuous emissions monitor (PM CEMS), because the final control device is a wet scrubber. U.S. EPA is considering, but has not finalized regulatory relief from compliance with an opacity standard if the emissions unit is equipped with a PM CEMS. The commenter suggests that IDEM add PM2.5 to the list of pollutants tested and remove "other mass emission rate" from 326 IAC 3-6-5(a)(3) and allow waivers from VE readings is the unit is equipped with a PM CEMS. (Alcoa)

Response: VE evaluations have always been required during PM/PM10 tests; this is not a new requirement. By correlating the visible emission level during PM/PM10 tests to the emission rate it provides inspectors an valuable tool for assessing whether the unit and associated control (if any) are running in the proper manner during inspections that may take places several years after the test. For instance, if during a compliance test the source was within their compliance limit with no visible emissions present, then during an inspection two years later visible emissions as read by the department were 15%, it may provide grounds for conducting another test to ensure the source was still compliant, or at the very least identifying why the visible emissions had changed between the two events. There are requirements to conduct visible emissions evaluations during stack tests for pollutants other than particulate. Lead testing pursuant to 40 CFR 60 is one example. Another example would occur when the testing was for a pollutant that existed in the solid phase such as metal HAPs. While the testing may not be specifically for particulate, the fact that the HAPs are by nature "particles" would make concurrent VE evaluations valuable for the reason already stated above. IDEM has revised the draft rule for preliminary adoption to allow the department or staff member present on-site to grant waivers for VE readings during adverse conditions. IDEM does not consider it appropriate to exempt stacks equipped with wet scrubbers from the requirement to conduct VE evaluation during testing or to remove the requirement for VE notations during mass emission rate testing. IDEM agrees that VE readings are not necessary for units equipped with a PM CEMS and has added this exemption to the draft rule for preliminary adoption. IDEM has added PM2.5 to the list of pollutants tested.

Comment: 326 IAC 3-6-5(a)(3) includes the phrase "unless otherwise mandated by federal regulation" How would a federal regulation affect the requirement to conduct visible emissions for at least 30 minutes? (BM) (Alcoa)

Response: While the state rule only requires opacity to be read for thirty minutes for

every hour of particulate sampling, U.S. EPA requires hour for hour reading. For example, while IDEM would only require three, 30 minute opacity runs at an asphalt plant for state implementation (SIP) compliance, the federal requirement under 40 CFR 60, Subpart I, would mandate three, 60 minute opacity runs. Therefore the federal rule is more stringent and the source would need to perform 180 total minutes of VE reading.

Comment: The language in 326 IAC 3-6-3(b)(1)(B) conflicts with 326 IAC 3-6-3(b)(1)(A) (or at the very least, is duplicative) and should be deleted. Clause (A) requires sources to conduct stack testing when it is operating at a minimum of 95% of its maximum operating capacity. In clause (B), the source must conduct a stack test under conditions of "worst case emissions." These terms conflict to the extent that clause (B) requires operating at a 100% capacity irrespective of what clause (A) allows. In addition, clause (C) expands the existing requirements to allow the department to impose testing conditions where "the department believes that changes in operating capacities have the potential to affect the emission levels." There is no obvious basis for this new condition or limit to the types of "operating capacities" under which IDEM can require tests. Emission limits at sources were established using specific testing protocols and these test protocols must be used during emission testing to demonstrate compliance with the existing limits. Clause (C) should be revised to delete "including, but not limited to, process conditions when the department believes that changes in operating capacities have the potential to affect the emission levels." (IPL) (BT)

Comment: The proposed amendments to 326 IAC 3-6-3 have changed acceptable performance test conditions from testing at conditions representing "normal operations" to conditions that represent at a minimum of 95% of the unit's listed maximum process or operating rate included in its permit and under conditions of worst case emissions. This differs from federal guidance contained in U.S. EPA's Clean Air Act National Stack Testing Guidance document dated April 27, 2009, which reads in part:

> Page 16 – A facility is not required automatically to retest if the initial test does not represent the range of combined process and control measure conditions under which the facility expects to operate, or if the test does not challenge to the fullest extent possible the facility's ability to meet applicable emissions standards without creating an unsafe condition. Furthermore, the facility is not required automatically to retest if the facility's operating conditions subsequently vary from those in place during the performance test. The delegated agency must determine whether retesting is warranted…

Additionally, the proposed amendments would require facilities to rely on a unit's "descriptive operating capacity" for determination of test validity. This descriptive information is not enforceable. Also, the term "worst case emissions" is overly broad. IDEM should restore the validity of emissions testing performed at conditions representative of normal operating conditions. (BM)

Response: The requirement to test at or near maximum capacity has not changed. IDEM feels it is necessary to clarify that emissions units should test under conditions of maximum operation, or under conditions which would simulate "worst case" emissions for the pollutant or

pollutants being tested. IDEM feels this is the more appropriate way to ensure that sources are compliant at other operating conditions which may involve running at maximum capacity, or under "worst case" conditions. In general, if these requirements are met a question cannot be raised regarding the compliance status under other operating scenarios. Regardless, IDEM also allows other operating conditions to be approved under clauses (B) or (C) in full realization that many sources will need to work with IDEM to develop an agreeable operating scenario for testing. This approach is consistent with other states within region V who require testing at or near maximum capacity. Additionally, U.S. EPA's Clean Air Act National Stack Testing Guidance (on page 15) discusses U.S. EPA's belief that challenging the control device under conditions simulating maximum loading is appropriate for sources with a mass emission limit. Normal operating conditions is overly broad and has often been interpreted to mean an emissions unit can operate at whatever condition it happens to be running at during the scheduled test. It may also create a situation where a company is operating at a much higher capacity than the capacity achieved during the most recent test. This could lead to a situation where a company may be required to retest if a reasonable suspicion exists that the higher operating rate may place the company's compliance status in jeopardy. The intent of the rule language is to clearly communicate that companies should strive for testing at maximum production rates, or a rate that creates a "worst case" condition, or at another production capacity as agreed upon during protocol review. Under these circumstances both IDEM and the source has assurances the source is operating in compliance across the range of expected operating conditions and would remove the possibility of retesting being conducted due to future production increases. IDEM realizes that the descriptive sections of the permit do not constitute enforceable conditions. However, when determining whether the requirements of 326 IAC 3-6-3(b) are being met during testing, IDEM uses the descriptive capacities which were provided by the source as part of the permit application. Without a definitive statement somewhere in the permit of what the maximum operating capacity of a particular unit is, IDEM has no way of ensuring the operating capacity requirement has been met. IDEM disagrees that the term "worst case emissions" is overly broad. Worst case emissions is just that, the operating condition that produces the highest potential emission rate for the pollutant or pollutants that are part of the test program. 326 IAC 3-6-3(b)(1)(B) deals with sources where running at maximum capacity may not simulate worst case conditions. An example is printing presses where in many cases the speed of the line does not correspond to maximum VOC loading. In these cases "worst case" is often a slower line speed with a more complete surface covering. This condition is designed to address these special cases and does not force sources to run at 100% production rates. IDEM has revised the draft rule for preliminary adoption to make it clear that it is clause (A) or (B), not clause (A) and (B). IDEM feels it is useful to retain the "including, but not limited to, process conditions when the department believes that changes in operating capacities have the potential to affect the emission levels" language in clause (C).

Comment: 326 IAC 3-6-6 provides a regulatory framework to judge the validity of an emissions test. IDEM has not provided sufficient detail in its criteria to invalidate performance results. Why is the proposed rule necessary? (BM)

Comment: Delete proposed new section 326 IAC 3-6-6 because the language in it is far too broad and it provides unfettered discretion to the agency to invalidate a stack test. If the language in this section is tightened up such that the only basis for invalidating a stack test were nonconformance to the stack test protocol, nonconformance with IDEM's written approval of the stack test protocol, or nonconformance with clearly specified regulatory requirements applicable to the test, then the language in the section would more accurately describe when IDEM has authority to invalidate a stack test. As written, it appears this language would allow IDEM to invalidate a stack test if the source or its stack testing contractor failed to follow a verbal instruction or suggestion from IDEM at the time of the stack test. Given the expense of conducting stack tests, sources should not have their stack tests at risk without understanding what the requirements of the test are in writing, through the protocol, protocol approval, or regulations. (ELC)

Response: 326 IAC 3-6-6 spells out the most common situations that may result in invalidation of a test. We have always had the authority to invalidate a stack test. This does not change or increase IDEM's ability to reject tests, it simply, and clearly gives the most common examples of what sources need to satisfy in order to ensure their tests are acceptable. An example of when IDEM would reject a test that was deemed conditionally acceptable but did not meet the testing requirements would be when calibration data on the stack testers equipment that is not available for review on-site, or calibrations that are performed by staff that indicate a piece of equipment must be recalibrated upon returning from the field. The test may be deemed conditionally acceptable pending a successful calibration outcome. Another example would be when the results of production data could not be verified during testing by the observer. IDEM may invalidate a test upon later discovery that the process or control device was not operated in such a manner as was agreed upon during the test protocol. IDEM may invalidate a stack test based upon verbal communication between an observer and the company at the time of the test. If the observer informs the source during testing that something is conditionally acceptable but will need to be addressed prior to report submittal and subsequently is not, it may result in test rejection. In order to address the concerns expressed by commenters in regards to the broad language in clause (B) requiring the owner or operator to "meet any conditions required by the department… that don't meet the testing requirements" IDEM has deleted clause (B) from the draft rule for preliminary adoption. The remaining language in 326 IAC 3-6-6 is sufficient to judge the validity of an emissions test.

Comment: At 326 IAC 3-6-6(3), the term "fugitive emissions" could be interpreted to be quite broad given the manner in which it is used in the proposed new section. IDEM should better identify fugitive emissions of concern to IDEM and cause the invalidation of testing. (IUG)

Response: IDEM has added "or associated capture or control system" to 326 IAC 3-6-6(3) to address fugitive emissions from capture and control systems.

Comment: 326 IAC 3-7-5 should be revised to state that sources do not need to have a coal sampling analysis SOP if the source uses CEMs for compliance and does not use coal

sampling as a backup when the CEM is down. (IPL) (BT) (IUG)

Response: IDEM agrees and has added a new subsection (b) to the draft rule for preliminary adoption.

Comment: Amend 326 IAC 3-7-5(a)(6) to allow revisions to the SOP to be stored at a central location and made readily available for inspection upon notice by the department. (IUG)

Response: Consistent with the language in subsection (c) for maintaining record for the rest of 326 IAC 3-7-5 IDEM has revised the language in subsection (a)(6) in the draft rule for preliminary adoption to say that SOP revisions shall be "maintained by the source and made available upon request by the department" and not "kept at the site" as initially proposed.

Comment: In 326 IAC 7-2-1(e)(2), the phrase "the other requirements of this rule shall not apply" should be inserted at the end of the sentence. (IPL) (BT)

Response: The lead-in line for this subsection (e) (subsection (f) in the draft rule for preliminary adoption) does not require that all methods be used to determine compliance. IDEM has revised the former subsection (g) (subsection (e) in the draft rule for preliminary adoption) to specify that fuel sampling and analysis requirements do not apply when the emissions unit is monitoring using CEMS. Subsection (g) was proposed to be deleted because of the way it was previously written implying that if the owner or operator did not notify the department of CEMS use then the CEMS data could not be used as a means for compliance.

Comment: 326 IAC 7-2-1(e) states "compliance determination based on a stack test is not sufficient to demonstrate compliance on a continuous basis." To be more accurate, this should be revised to state "compliance determination based on a stack test is not sufficient to demonstrate compliance or non-compliance on a continuous basis. Compliance determination based on a stack test is also insufficient to demonstrate compliance or non-compliance with emission limits based on averaging period which exceed the stack test, such as 30-day rolling averages." (IPL) (BT)

Comment: What is the purpose in stating in 326 IAC 7-2-1(e) that "stack testing is not sufficient to demonstrate compliance on a continuous basis"? Certain units may not warrant parametric monitoring requirements given their potential to emit or history of compliance. This proposed addition is problematic and affects several other requirements. (BM)

Response: IDEM inadvertently included the phrase "compliance determination based on a stack test is not sufficient to demonstrate compliance on a continuous basis" and has deleted it from the draft rule for preliminary adoption.